



AGENDA

**Carbondale Zoning Board of Appeals
January 10, 2018
City Hall/Civic Center, Room 108
200 South Illinois Ave.
6:30 p.m.**

- 1. Call to Order and Roll Call**
- 2. Approval of Minutes:** Minutes of November 29, 2017
- 3. Citizens Comments and Questions**
- 4. Hearings:**

ZBA 18-01- Kevin Wheetley is requesting an 11.43 foot variance from Section 15-2.9.9 of the Carbondale Revised Code, which outlines the side yard setback requirements in the AG, General Agriculture, Zoning District. This request is being made for 39 Salt Life Lane.

- 5. Old Business**

None
- 6. New Business**

None
- 7. Adjournment**



MINUTES
Carbondale Zoning Board of Appeals
Wednesday, November 29, 2017
Room 108, 6:00 p.m.
200 South Illinois Avenue

MEMBERS PRESENT: Henson, LeBeau, Burnside, Love, Lilly

MEMBERS ABSENT: Sheffer, Hamilton, Miller, Litecky

STAFF PRESENT: Taylor, Brightharp

1. Call to Order and Roll Call

Roll call was completed and the determination of a quorum was made.

2. Approval of Minutes:

Mr. Love moved, seconded by Ms. Lilly, to approve the minutes of May 10, 2017.

The motion was approved by a unanimous voice vote.

3. Citizen Comments or Questions:

None

4. Hearing:

ZBA 18-01 – Kevin Wheetley is requesting an 11.43 foot variance from Section 15-2.9.9 of the Carbondale Revised Code, which outlines the side yard setback requirements in the AG, General Agriculture, Zoning District. This request is being made for property at 39 Salt Life Lane.

Dr. LeBeau opened the Public Hearing at 6:01 p.m. and asked Mr. Taylor to read the Legal Notice.

Mr. Taylor, Senior Planner for the City of Carbondale, read the Legal Notice.

Dr. LeBeau asked Ms. Brightharp to present the staff report.

Ms. Brightharp, Planner for the City of Carbondale, was sworn in and presented the staff report for ZBA 18-01.

Dr. LeBeau asked if the Commissioners had any questions for the staff.

Mr. Henson asked if the building was located next to the neighbor's property line or the empty field next to the property. Ms. Brightharp stated it was located next to the neighbor's property.

Dr. LeBeau asked if the applicant was present and would like to step forward and present their case.

Mr. Wheetley came forward and asked for this hearing to be postponed until more Board Members could be present to hear the case. Chris Wallace, Director of Development Services for the City of Carbondale, came forward to explain that with the Zoning Board of Appeals cases there must be five affirmative votes to pass the variance. So Mr. Wallace agreed that for Mr. Wheetley it was a disadvantage for him only having five Board Members present to hear the case. There was then discussion about deferring action on this case.

Mr. LeBeau asked for a motion to defer action on ZBA 18-01 until a later date.

Mr. Henson moved to defer action on ZBA 18-01 until January 10, 2018, seconded by Ms. Lilly.

Roll Call Vote

Yes – 5 (Henson, LeBeau, Burnside, Love, Lilly)

No – 0

Mr. Taylor stated that the motion to defer action had passed and that ZBA 18-01 would now be heard at the January 10, 2018, meeting.

5. Old Business:

None

6. New Business:

None

7. Adjournment:

Dr. LeBeau adjourned the meeting at 6:12 p.m.



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M-E-M-O-R-A-N-D-U-M

TO: City of Carbondale Zoning Board of Appeals

FROM: Megan Brightharp, Planner MB

RE: ZBA 18-01, 39 Salt Life Lane, variance from the minimum side yard setback for primary structures in an AG, General Agriculture, District

DATE: December 27, 2017

(Zoning Board of Appeals Public Hearing on Wednesday, January 10, 2018, 6:00 p.m.)

Applicant/Owner: Kevin Wheatley
39 Salt Life Lane
Carbondale, IL 62901

PART A. BACKGROUND AND SUMMARY

Kevin Wheatley is requesting an 11.43 foot variance from Section 15-2.9.9 of the Carbondale Revised Code, which outlines the side yard setback requirements in the AG, General Agriculture, Zoning District, (Please refer to Exhibit A- Location Map) for 39 Salt Life Lane. The Carbondale Revised Code Section 15-2.9.9 states that the minimum side yard setback for a primary structure in the AG district shall be 10% of the lot width, but no less than fifteen feet (15'-0"). The property is 164.25 feet wide and requires a 16.43 foot side setback. If granted, this variance will reduce the side setback of this property to five feet (5'-0").

The applicant is making this request of an 11.43 foot variance to bring a previously constructed building into compliance with the City's Zoning Ordinance (Please see Exhibit B- Applicant's Brief). In 2015, after enlisting the services of a land surveyor to identify the property lines, Kevin Wheatley had a shop building constructed for his business, Wheatley Construction Company, LLC, approximately five feet (5'-0") away from the western property line (Please Refer to Exhibit C- Photographs of the Subject Property). The building was constructed without securing the proper permits from the City.

In the summer of 2016, Planning staff was made aware of a trucking company operating off of West Pleasant Hill Road, and subsequently discovered that the applicant was operating a Contract Construction Business on the site and that a new building had been constructed. On August 23, 2016, Mr. Wheatley was contacted and asked to visit the Planning Services office to

describe the nature of his business on this property. Mr. Wheatley promptly came in and explained that he is operating an excavation company that operates four semi-trucks a day into and out of the subject property. Mr. Wheatley has applied for, and received, a Special Use Permit (PC 17-11), with conditions, as he wishes to continue the operation of his business at this location with the allotment of a potential expansion of up to two additional semi-trucks and potentially construct a private residence on the neighboring lot at a later time. However Mr. Wheatley did not meet these conditions which included the submission of a development plan and obtaining a zoning certificate and was subsequently issued a citation on October 17, 2017.

APPLICABLE REGULATIONS:

15.2.9: AG General Agriculture District:

15.2.9.1: Statement of Intent:

This district is created to provide land for purposes devoted primarily to the production of agricultural products such as field crops, livestock, fowl and other conventional agricultural pursuits. Other limited compatible uses are also permitted. This district is also created to assist in the conservation of the natural resources within the jurisdiction of this ordinance by encouraging practices which will conserve soil, soil resources, water, water resources, and prevent soil erosion and floodwater damages. Utilities other than electricity and telecommunications should be provided by the land user thereby discouraging the uneconomical extension of public water supply and sewage disposal facilities. Uses not related to agriculture are discouraged. When the public interest will be served and only when a contribution will be made to orderly growth, portions of this district may be rezoned for alternative uses.

15.2.9.9: Minimum Side Yard Width:

Ten percent of lot width on each side, but shall not be less than fifteen feet (15') and need not be more than thirty feet (30').

Sec. 15-6.9.1 Provisions for Hearing and Deciding upon Appeals and Variances:

B. Variances

1. A variance may be granted by the Zoning Board of Appeals after a public hearing upon the following conditions:
 - a) That the party seeking a variance makes written application to the Board demonstrating:
 - 1) That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district;
 - 2) That literal interpretation of the provisions of this Article would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Article;
 - 3) That the special conditions and circumstances do not result from the actions of the applicant.
 - 4) That granting the variance requested will not confer on the applicant any special privilege that is denied by this Article to other lands, structures, or buildings in the same district.
 - b) That the granting of the variance will be in harmony with the general purpose and intent of this Article and will not be injurious to the neighborhood, or detrimental to the public welfare. A variance shall not be granted merely to serve as a convenience to the applicant, but only if it is necessary to alleviate some demonstrable hardship or difficulty. Under no circumstances shall the Board grant a variance to allow a use not expressly permissible under the terms of this Article in the district involved.

PREVIOUS SETBACK VARIANCES: Since fiscal year 2003, the Zoning Board of Appeals has reviewed sixteen (16) request for a variance from yard setbacks in a variety of districts. The Zoning Board of Appeals approved seven (7) of the request.

CORRESPONDENCE RECEIVED: City Staff has received one phone call in opposition to this request.

PART B. ANALYSIS

Sec. 15-6.9.1.B.1: A variance may be granted by the Zoning Board of Appeals after a public hearing upon the following conditions:

Staff's responses to the criteria in Section 15-6.9.1.B.1 for granting a variance are as follows:

- a. (1) ***That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district.***

It is of the staff's opinion that there are no special circumstances peculiar to the land that are not applicable to other lands in the AG district. The site is flat and is approximately 164 feet wide, wide enough to accommodate the building size, parking, and necessary circulation and still abide by the required setbacks.

- (2) ***That literal interpretation of the provisions of this Article would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Article.***

The literal interpretation of the provisions of this article would not deprive the applicant of rights enjoyed by other properties in the AG district. Any other property owner in this district would be required to build to the appropriate setbacks.

- (3) ***That the special conditions and circumstances do not result from the actions of the applicant.***

It is the staff's opinion that the location of the building in question was an action of the applicant. It is the staff's opinion that building a structure in the City of Carbondale's zoning jurisdiction without regards to the City's zoning code is not a special condition or circumstance that would justify this variance request.

- (4) ***That granting the variance request will not confer on the applicant any special privilege that is denied by this Article to other lands, structures, or buildings in the same district.***

Granting the variance will confer on the applicant a special privilege not available to other property owners in the area. The side yard setback requirements limit all property

owners in the City's zoning jurisdiction from building structures within the minimum setback area.

5. *That the granting of the variance will be in harmony with the general purpose and intent of this Article and will not be injurious to the neighborhood, or detrimental to the public welfare. A variance shall not be granted merely to serve as a convenience to the applicant, but only if it is necessary, to alleviate some demonstrable hardship or difficulty. Under no circumstances shall the Board grant a variance to allow a use not expressly permissible under the terms of this Article in the district involved.*

It is the staff's opinion that the granting of the variance would not be in harmony with the general purpose and intent of this Article. The intent of the variance process is to allow for flexibility in the zoning code only where the strict enforcement of the zoning code would cause an undue hardship upon the applicant due to unique circumstances surrounding the property or structure. The structure in question was erected after the establishment of the city's zoning codes, failing to meet the side setback requirements. Therefore, there is no legal justification for granting the variance.

Staff does not find granting this variance to be injurious to the neighborhood, nor would it be detrimental to the public welfare. Granting this variance will not alter the general character of the district. However, granting this variance will alter the layout of the district by allowing this one property to be closer to an adjacent property line than any of the other properties. The adjacent neighbor's reluctance to sell a portion of his property to Wheatley prevents him from pursuing the simplest and most economical route to bringing this property up to code, creating in its right an economic hardship. However, the zoning violations resulted from actions of the applicant and granting the variance would serve as a convenience instead of a necessity.

PART C. RECOMMENDATIONS:

Based on the analysis presented in this report, and the applicant having not met the five criteria for granting a variance, Staff recommends the Zoning Board of Appeals deny ZBA 18-01.

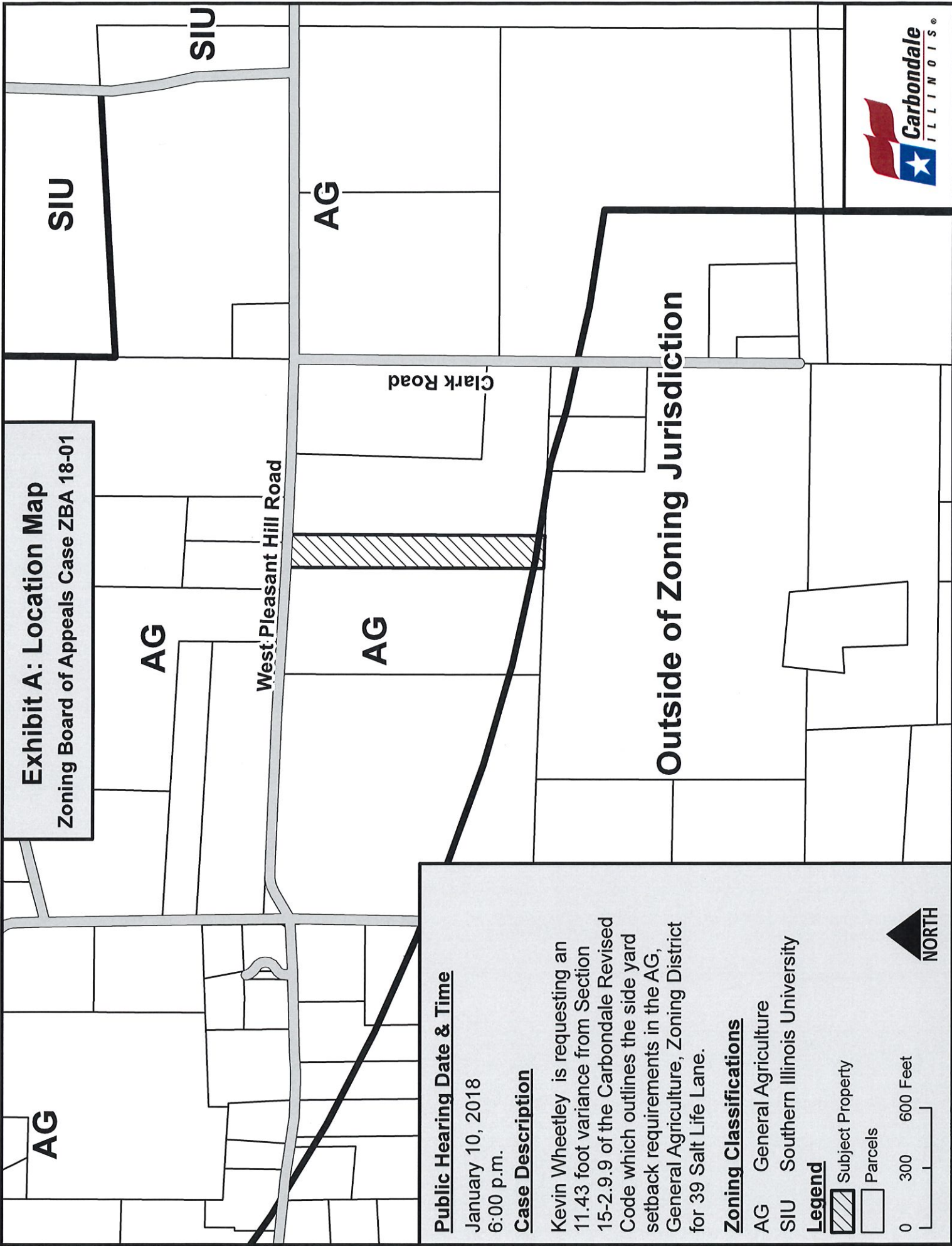


Exhibit A: Location Map

Zoning Board of Appeals Case ZBA 18-01

Public Hearing Date & Time

January 10, 2018
6:00 p.m.

Case Description

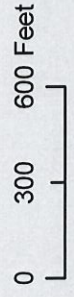
Kevin Wheelley is requesting an 11.43 foot variance from Section 15-2.9.9 of the Carbondale Revised Code which outlines the side yard setback requirements in the AG, General Agriculture, Zoning District for 39 Salt Life Lane.

Zoning Classifications

- AG General Agriculture
- SIU Southern Illinois University

Legend

-  Subject Property
-  Parcels



WHEETLEY CONSTRUCTION COMPANY LLC

**2131 Old US HWY 51
(618) 713-0318 Cell**

"Since 1960"

**Makanda, IL 62958
(618) 457-1100 Office**

November 4, 2017

Section 2-D #3

Kevin Wheetley, owner and operator of Wheetley Construction Company, located at 39 Salt Life Lane. When I had the shop building constructed in 2015, I was totally unaware of the City's zoning ordinances, being that it is located in the country and in the agricultural zoned district. I met with the adjoining neighbor, Mr. Keith Lingle, on the location of my building being approximately 5 feet off the property line and he had no problem with that. I expressed interest in his property when he decides to sell in the future to give me room for expansion if so.

2-D 4-B

The building measures 40 ft. wide by 63 ft. long, placing the building closer to the property line to the West gave room on the East side for parking and access to the property behind the shop building, being that this 5 acre tract is long and narrow. The width of the 5 acres is only 164 ft.

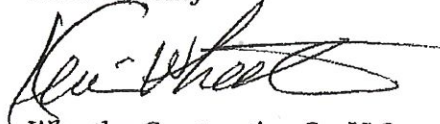
Another solution to this matter would be to purchase additional property from Mr. Lingle to comply with the terms of the city code set back. Mr. Lingle has stated that he would not sell a small portion of his property but in the future sell the entire 50 acres he has left. In the state of the economy at this time, I am not able to purchase Mr. Lingles property if he were to sell. Business is down and would put a hardship on me if this was the only solution.

2-D 6-C

I am asking that the Board of Appeals will grant me this request for the variance which will not affect anyone now or in the future, the neighbors or adjoining properties. It will not be injurious to the neighborhood, detrimental to the public, but will be consistent with the district and goes along with the surrounding properties, farms, big lots with various uses.

Thank you for your time and consideration.

Kevin Wheetley



Wheetley Construction Co. LLC

Exhibit C: Photos of Subject Property



View away from property facing north across West Pleasant Hill Road



View of property facing south across West Pleasant Hill Road

Exhibit C: Photos of Subject Property



View facing east along West Pleasant Hill Road



View facing west along West Pleasant Hill Road